86 - 1186

No.

Supreme Court, U.S.
FILED
DEC 29 1986
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES
October Term, 1986

VICTOR SWIERKOWSKI

LARRY BOUCHER

Petitioners
In
Propria Persona

v.

UNITED STATES OF AMERICA

Respondent,

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

Dated: December 23, 1986

Victor Swierkowski
2046 Q Street
Rio Linda, Ca. 95673
tel.(916) 991 5331
Larry Boucher
P.O. Box 3116
Grass Valley, Ca. 95945

83pp

QUESTIONS PRESENTED FOR REVIEW

(1) Were the substantive rights of Petitioners violated by the The United States District Court for the Eastern district of California when it acted without fact or evidence to support its position in issuing a Summary Judgement against Petitioners.

(2) Were the substantive rights of Petitioners violated by the The United States District Court for the Eastern district of California when it failed to address the issue of relevant facts supporting the Respondents position that Petitioners were indeed "TAXPAYERS" subject to specific performance under Title 26 I.R.C..

(3) Were the substantive rights of Petitioners violated by the The United States District Court for the Eastern district of California when the subject matter of jurisdiction by the Federal Government agency (I.R.S.) over Petitioners was

challanged, and was ignored by the court without the submission of fact to support the Respondent position that Petitioners don't have any Constitutional Rights.

(4) Were the substantive rights of Petitioners violated by the The United States District Court for the Eastern District of California when the Petitioners right to petition the Court for redress of grievance was summarily denied and Petitioners Petition was branded as being "frivoulous" (amendment I Sec. 1)

(5) Were the substantive rights of Petitioners violated by the The United States District Court for the Eastern district of California when it denied the right of Petitioners to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, and in total co-operation with criminal activities of certain persons within Respondent's Agency-I.R.S. (Amendment IV sec. 1)

(6) Were the substantive rights of Petitioners violated by the The United States District Court for the Eastern district of California when it denied Petitioners the right of trial by jury in matters exceeding twenty dollars when the matter of trial by jury shall be preserved. (amendment VII sec 1.)

(7) Were the substantive rights of Petitioners violated by the The United States District Court for the Eastern district of California when it denied the Petitioners certain rights as enumerated in the constitution under amendment IX sec. 1

(8) Were the substantive rights of Petitioners violated by the The United States District Court when it deprived the Petitioners certain rights to Life, Liberty and Property as enumerated in the constitution under amendment V.

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STATEMENT OF JURISDICTION

Jurisdiction of the federal District Court below was pursuant to Title 28 U.S. Code Sec. 1340, and authority pursuant to sec. 702 through 706 Title 5 U.S.C. the Administrative procedure Act. Jurisdiction was further mandated by U.S.C. 1331 relating to the 5th and 9th Amend. of the U.S. Constitution. An order was handed down on May 24, 1985. Jurisdiction of the Ninth Circuit Court of Appeals was pursuant to 28 U.S.C. §1291 and 28 U.S.C. 1253. A Memorandum not for publication was filed Sep. 15, 1986.

On September 23, 1986 Petitioners filed a Petition for Notice of Rehearing and this was denied on October 9, 1986.

On October 23, 1986 Petitioners filed a Notice of Appeal to the Supreme Court with the Clerk of the Ninth Circuit Court of Appeals, docketed 10/27/1986.

Jurisdiction of the United States Supreme Court to review the ruling of the Ninth Circuit by Writ of Certiorari is conferred pursuant to 28 U.S.C. §1251(a)(b) and §1254(1), and 1651(a)(b).

CONSTITUTIONAL AND STATUTORY

PROVISIONS INVOLVED

Article 1, Sec. 9 Cl.4 U.S. Constitution:

"No capitation, or other direct, tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

Article 1, Sec. 2, Cl. 3, U.S. Constitution:

"Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers..."

Article 1, Section 8, Clause 1, U.S. Constitution:

"The Congress shall have Power to lay and collect Taxes, Duties, imposts and Excises, to pay the Debts and provide for the Common Defence and General Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;.."

nor shall private property be taken for public use, wihout just compensation."

Article VI Sec. 2, U.S. Constitution:

"This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the Judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding."

Article VI Sec. 3, U.S. Constitution:

"The Senators and Representatives before mentioned, and the members of the several State Legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

AMENDMENT V

"No person shall be.....deprived of life, liberty, or property, without due process of law;

AMENDMENT IV

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

AMENDMENT IX

"The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

AMENDMENT X

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Title 18 USC 241

"If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States...They shall be fined not more than $10,000 or imprisoned not more than ten years, or both;..."

Title 18 USC 242

"Whoever, under color of any law, statute, ordinance, regulation or custom willfully subjects any inhabitant of any State, Territory or District to the deprivation of any rights, privileges or immunities secured or protected by the Constitution or laws of the United states,...Shall be fined not more than $1,000 or imprisoned not more than one year or both:..."

STATEMENT OF THE CASE

The Petitioners in the instant case filed an original action against the United States of America in January 11, of 1985 after many attempts by Petitioners . to obtain DUE PROCESS of law were met by denial. The endeavor for DUE PROCESS was in the form of affidavits and hundreds of pages of correspondence in which I.R.S. jurisdiction over Petitioners was challenged and subsequently disregarded by certain individuals within the agency. Petitioners endeavored to obtain due process of law from the IRS in the form of an administrative hearing in which jurisdiction was challenged and this action was also denied by individuals within the Agency.

Petitioners being frustrated and thwarted in all attempts for DUE PROCESS brought this matter into the federal district court in Sacramento in the hopes that Petitioners substantive rights which are protected under the organic constitution might be reaffirmed. This action also resulted in failure because the Attorneys for Respondent

claimed that Petitioners were taxpayers and consequently failed to show proof of this allegation. A Summary Judgement with costs was then issued against Petitioners. This Judgement was appealed but was summarily denied.

Consequently, Petitioners filed an appeal with the 9th Circuit Court of Appeals on Nov. 15, 1985 and raised the issue of relief from a direct tax which violated the provisions of Art. 1, Sec. 9, Cl. 4, and also to seek remedy from involuntary servitude forced on Petitioners by the IRS.

On May 15, 1986 Petitioners filed a Request for Oral Argument and this request was denied.

On September 15, 1986 the Ninth Circuit denied Petitioners Appeal.

On September 23, 1986 Petitioners filed a Petition for Notice of Rehearing and this was denied on October 9, 1986.

On October 23, 1986 Petitioners filed a Notice of Appeal to the Supreme Court with the Clerk of the Ninth Circuit Court of Appeals, docketed 10/27/1986.

Petitioners only remedy available in this instant case is to appeal this matter to the U.S. Supreme Court for an order for a Writ of Certiorari remanding this matter back to the U.S. District Court in Sacramento in order to effect DUE PROCESS OF LAW. Or in the alternative, overrule the decision handed down by the 9th Circuit Court of Appeals.

Petitioners filed a request with the Ninth Circuit that the record be certified and transmitted to the Supreme Court, pursuant to Rule 19.1, Supreme court Rules, on the basis that the record is essential to a proper understanding of the case by this Court.

REASONS THIS COURT SHOULD GRANT CERTIORARI OR IN THE ALTERNATIVE OVERRULE THE NINTH CIRCUIT COURT MEMORANDUM

First, the ruling below by the District Court and the Memorandum from the Ninth Circuit Court of Appeals is in error because the inalienable rights of Petitioners have been severly compromised.

While the courts claim that as taxpayers the Petitioners had a recourse for their claim, this contention is in total error. The court neglected to show the evidence or taxable event that makes Petitioners Taxpayers even though Petitioners have denied and supported by Affidavit the claim of Nontaxpayer status. This evidence was presented as an exhibit in the appeal to the Ninth Circuit.

It is evident that there is no relief for Non taxpayers in the IRS Code through Administrative Procedure which had been demanded by Petitioners prior to bringing this action into the Federal Distirct Court in Sacramento.

The Attorneys for the Respondent have consistently claimed Appellants to be Taxpayers and yet have completely failed to provide a shred of

evidence or Affidavit that would purport to show the taxable event that would make Petitioners Taxpayers.

This action was perpetrated over Petitioners objection and has systematically steamrolled the Petitioners inalienable rights into the ground by the application of statute law and in total violation of the provisions of the U.S. Constitution set forth to protect Petitioners rights.

This action has been perpetrated against the Petitioners with the full support of the District Court below by an Order for Summary Judgement and re-affirmed by the Ninth Circuit Court of Appeals by Memorandum. In addition, penalties, have been assessed against Petitioners by the Court for purportedly bringing a frivolous action.

If the ruling of the lower Court is allowed to stand, then the only course of action the Court can take is to dismiss the penalties against the Petitioners because they cannot be fined without minimal due process. See.....

Sherar v. Cullen, 481 F2d 946 (1973)

in which the court said:...

> "There can be no sanction or penalty imposed upon one because of his exercise of Constitutional Rights." and in..... Simmons v. US 390 US 389 (1968) "We find it intolerable that one Constitutional right should have to be surrendered in order to assert another."

Second, this Court must give serious consideration to the violation of Petitioners rights, for these rights are the gifts of God and are protected by the U.S. Constitution. These rights to Life, Liberty, and the Pursuit of Happiness are spoken of by Jefferson, in the Declaration of Independence. He said, and the Founding Fathers agreed, that all mankind is equally "...endowed by their Creator, with certain inalienable rights, that among these are life, liberty and the pursuit of happiness. That to secure these rights governments are instituted ..."1776 The Preamble to the U.S. Constitution reinforces the above stated goals wherein it declares that,

"We, the people of the United States in Order

to...secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America."1789

These two historical documents state with unquestionable clarity, the intent of the Founding Fathers and of the Constitutional Convention that signed the U.S. Constitution and established our government.

The uninterrupted line of case law by the judiciary, that the intent of the legislators, is the law, is there for all to see.

The right to work and to enjoy the fruit of one's labor, is an inalienable right, given by God and protected by our law.

> See HELVERING v. EDISON BROS. STORES 133F 2d 575 The Supreme Court held:"The Treasury Department cannot, by interpretive regulations make income of that which is not income within the meaning of the revenue acts of Congress, nor can Congress, without apportionment, tax as income that which is not income within the meaning of the Sixteenth amendment."
> In BUTCHERS UNION CO. v. CRESCENT CITY CO. 111 U.S. 746,757,The Court held:.....
> "The property which every man has in his own labor, as it is the

> original foundation of all other property, so it is the most sacred and inviolable: (concurring opinion)
>
> In **EVANS** v. **GORE**, 253 U.S. 245, held: "The 16th amendment does not justify the taxation of PERSONS OR THINGS PREVIOUSLY IMMUNE. It was intended only to remove all occasions for any apportionment of income taxes among the States." (emphasis added)
>
> See also:
> **SIMS** v. **AHRENS** 271 SW 720 (1925)
>
> U.S. v. **FLORA** 362 U.S. 145,176
> **POLLOCK** v. **FARMERS LOAN & TRUST** 158 U.S. 601
> **BRUSHABER** v. **UNION PACIFIC R.R. CO.**, 240 U.S. 1

It is evident by the above cites, that the Supreme court has supported and has been in total agreement with Petitioner's claim for Due Process and violation of inalienable rights.

This court must give serious consideration to the claims made by Petitioners because Petitioners in the instant case have never reliquished these rights.

ARGUMENT

Much time and study has elapsed since this action was first brought by Petitioners. Petitioners have since found that because of much confusion that has been created in law through the enactment of reams of statutes and laws, only a thin line now separates juristic persons from natural persons. This evidence is so great that most graduate lawyers of today have difficulty in discerning the difference.

It goes without saying that the pro se Petitioners would be most likely to fall victim to such confusion. However, the fact remains that Petitioners knew that their non taxable property (earnings) was being illegally garnished by the federal government agency (I.R.S.) under color of law, and when the federal government agency (I.R.S.) was challenged as to its authority to do so, Petitioners were further damaged by even more of their private property being taken and the addition of assessment of penalties followed.

Petitioners have been severly damaged by such

vicious propensity including confiscation of a substantial amount of Petitioners own labor earnings and creating hardship on Petitioners families. This action eventually caused Petitioners to lose their jobs. Certain persons within Respondent's agency (I.R.S.) acting under the color of law are responsible for this action.

Petitioners sworn affidavits were repeatedly ignored and consequently, their right to Due Process severely compromised .

If sufficient facts have not been shown in a complaint, or in the evidence that the "Petitioners" were involved in any revenue taxable activity, event or incident, then the Federal Agency (I.R.S.) does not have subject matter jurisdiction over Petitioners herein. (See U.S. v Sanocki CR 81-364 U.S. D. Ct. Cent Dis. Cal. (1981)

If the Supreme Law of the land, The United States Constitution is still in place, the Supreme Court must address this enormous injustice and revert this matter back to the Federal District Court for action and remedy.

The record will reflect that the attorneys for the U.S. have based their whole case on the presumption that Petitioners are taxpayers without submitting any evidence to support said presumption.

> "A presumption is not evidence, a presumption is either conclusive or rebuttable. Every rebuttable presumption is either
> (a) a presumption affecting the burden of producing evidence, or
> (b) a presumption affecting the burden of proof." Cal evidence Code (Black's Law 5th pp 1067)

The Petitioners herein by the summary action in the district court below were prevented from producing substantial evidence which would prove beyond a shadow of a doubt that Petitioners substantive due process rights had been and were continuing to be violated.

> "Due process of law implies the right of the person affected thereby to be present before the tribunal which pronounces judgment upon the question of life, liberty, or property, in its most comprehensive sense; to be heard, by testimony or otherwise, and to have the right of controverting, by proof, every material fact which bears on the question of right in the matter involved. If any

> question of fact or liability be conclusively presumed against him, this is not due process of law." (Black's Law 5th pp 449)

Petitioners have consistently objected to being termed "taxpayers" and have claimed that their substantive rights are intact, have supported this position by Notarized Affidavit, and that Petitioners never waived any of their God given rights. Petitioners are in no way to be presumed to be juristic persons.

Petitioners have discovered that the statutes and laws have been so constructed as to create great confusion when seeking remedy because statutes and laws are created to govern juristic persons and Petitioners are in fact natural persons. Petitioners substantive rights are protected by the Supreme Law of the Land in the first 10 amendments of the organic constitution.

The courts below, The Superior Court, The Federal District court, and the 9th Circuit Court of Appeals have maliciously treated Petitioners as though they were juristic persons by handing down,

an Order, denying their complaint and subsequently re-affirmed by the 9th Circuit court of Appeals. This in effect denied Petitioners their rightful remedy of due process of law which is guaranteed by the Constitution of the United States under Amend 4 Sec 1; Amend. 5 Sec 1; Amend. 7 Sec 1; and Amend. 9 Sec. 1.

Petitioners have never been bonified taxpayers and have held steadfastly to their non-taxpayer status. (See Hale v. Henkel,201 U.S. 43.)

Petitioners no longer enjoy the privileges of Commerce and Socialism and are free of the general laws that regulate a specific class of persons engaged in commerce and have so declared.

Petitioners find that they are unable to exercise their right to be free from a compelled performance and exit the shackles of commerce in order to exercise their GOD given RIGHTS as protected by the 5th Amendment of the Constitution.

There can be no rule making that would abridge the RIGHTS of Natural Individuals.

Petitioners position here is well established by the following U.S. Supreme Court cases.

> In **MIRANDA** v. **ARIZONA** 384 U.S. 436,49186 S. CT. 1602 (1966) Held: "Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them.
>
> In **MARBURY** v. **MADISON**, 5 U.S. (CRANCH) 137, 18-(1803) Held: "All laws (Rules and Practices) which are repugnant to the Constitution are null and void."
>
> In Boyd v. U.S. 116, 635, (1885) Held: "It is the duty of the courts to be watchfull for the Constitutional rights of the citizen and against any stealthy encroachments thereon."
>
> In **McCULLOCH** v. **MARYLAND**, v Wheat 17 U.S. 415,431, 316 **KNOWLTON** v. **MOORE**, 178 U.S. 41 **ENOCH** v. **WILLIAMS**, 370 U.S. 1 The court held: "The power to tax involves the power to destroy."

The court is no doubt cognizant that decisions that have been ruled upon in days past are still relevant in similar as well as the instant case.

> **Stare Decisis** To abide by, or adhere to, decided cases. Policy of courts to stand by precedent and not to disturb settled point.

> **Neff v. George, 364 Ill. 306, 4 N.E.2D 388, 390, 391.** Doctrine that, when court has once laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle, and apply it to all future cases, where facts are substantially the same; regardless of whether the parties and property are the same.....
> **Horne v. Moody, TexCiv.App., 146 S.W.2D 505, 509, 510.**
> Under doctrine, when point of law has been settled by decision, it forms precedent which is not afterwards to be departed from, and, while it should ordinarily be strictly adhered to, there are occasions when departure is rendered necessary to vindicate plain, obvious principles of law and remedy continued injustice.
> (Black's Law 5th pp. 1261)

Petitioners know that absent JURISDICTION, the IRS/State Taxing authority has no power: It is elementary that there can be no judicial action affecting vested rights that is not based upon some process or notice whereby the interested parties are brought within the jurisdiction of the judicial tribunal about to render judgement.

> **DUE PROCESS RIGHTS** All rights which are of such fundamental importance as to require compliance with due process standards of fairness and justice.

The Fifth amendment states that no person shall be deprived of life, liberty, or property without due process of law, which means that no person may have property garnished or be penalized until it is in accordance with **DUE PROCESS OF LAW.**

Clearly, Due Process in the instant case was denied to the Petitioners in the District Court below and in the 9th Circuit Court of Appeals as the record will show.

> **DUE PROCESS OF LAW** Law in its regular course of administration through courts of justice. Due process of law in each particular case means such an exercise of the powers of the government as the settled maxims of law permit and sanction and under such safeguards for the protection of individual rights as those maxims prescribe for the class of cases to which the one in question belongs..... (Black's Law 5th pp. 449)

Pursuant to Rule 17 Sec. 1(a)(c) of this court, Petitioners request that this court recognize a status De jure citizenship of the United States. (See Affidavit's of status and Special Notice.)

CONCLUSION

Petitioners strongly press this court to give serious consideration to the charges (denial of Due Process and No Taxable Event or Jurisdiction) that have been set forth in this instant case. It is all too evident that Petitioners rights and liberties have been severely hampered by the Federal Government Agency (I.R.S.) and its underlings.

The time has come for the Supreme Court to address the fact that certain liberties have been taken by the Federal Government agency (I.R.S.) against Petitioners that is unjust and unconstitutional. Continued tolerance of this activity will only result in more hostility towards governmental abuse and create even more demise of respect for governmental authority.

Preservation of the due process rights of Petitioners far outweighs any considerations of governmental order or convenience and respect between branches of government. Government was intended to be Of the People, By the People and For the People. This is the way it should be.

If the Courts continue to allow the inalienable rights of the citizens of this country to be violated without factual support or at the whim of a high priced lawyer, then the Justices will personally be held to account to the grantor of these inalienable rights. There is no room for intolerance in the Court of Divine justice, only justice will persevere.

Again, Petitioners urges this Court to grant certiorari and fully review the issues raised herein.

Dated this 23rd day of December, 1986

RESPECTFULLY SUBMITTED:

Victor Swierkowski

Victor Swierkowski
2046 Q Street
Rio Linda, California 95673

Larry Boucher
P.O. Box 3116
Grass Valley, Ca. 95945

Petitioners
In Propria Persona

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY THAT ON Dec. 24th 1986,

I SERVED THE ATTACHED DOCUMENT/s ENTITLED

PETITION FOR WRIT OF CERTIORARI

ON THE INTERESTED PARTIES IN THIS ACTION, BY PLACING POSTAGE PREPAID COPIES IN THE UNITED STATES POST OFFICE ADDRESSED TO THE FOLLOWING:

YOSHINORI H.T. HIMMEL AUSA
3305 FEDERAL BUILDING
650 CAPITOL MALL
SACRAMENTO, CA. 95814

EXECUTED THIS 24th DAY OF December

AT RIO LINDA, CALIFORNIA, 95673

S / Victor Swierkowski
VICTOR SWIERKOWSKI
2046 Q STREET
RIO LINDA, CA. 95673

IN PROPRIA PERSONA

-30-

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY THAT ON JAN. 14th 1986,

I SERVED THE ATTACHED DOCUMENT/s ENTITLED

PETITION FOR WRIT OF CERTIORARI (corrected version)

ON THE INTERESTED PARTIES IN THIS ACTION, BY PLACING POSTAGE PREPAID COPIES IN THE UNITED STATES POST OFFICE ADDRESSED TO THE FOLLOWING:

YOSHINORI H.T. HIMMEL AUSA
3305 FEDERAL BUILDING
650 CAPITOL MALL
SACRAMENTO, CA. 95814

GLENN L. ARCHER
ASSISTANT ATTORNEY GENERAL
U.S. DEPARTMENT OF JUSTICE
WASHINGTON, D.C. 20530

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
JOSEPH F. SPANIOL, JR., CLERK
1 FIRST STREET, N.E.
WASHINGTON, D.C. 20543

EXECUTED THIS 12th DAY OF JANUARY 1987

AT RIO LINDA CALIFORNIA, 95673

S / Victor Swierkowski

VICTOR SWIERKOWSKI
2046 Q STREET
RIO LINDA, CA. 95673

IN PROPRIA PERSONA

-30- A

AFFIDAVIT OF STATUS

KNOW ALL MEN BY THESE PRESENTS, that I, Victor Swierkowski, a Free and Natural Citizen, am by all intents and purposes a Citizen of the United States and of California who operates at law, on a cash basis, without recourse to Standard Lawful Money with which to transact business, due to an Act of Congress, HJR 192 of June 5, 1933, and the practices of the Federal Reserve System since December 23, 1913, until the present.

Being a citizen at the Common Law, and enjoying no privilege of limited liability for the payment of debts, nor engaged in any maritime adventure, nor holding any insurable interest of the county, state, or federal government, I do hereby demand and assert all of my "rights at law' under the Declaration of Independence, the

Constitution of the United States, and the Bill of Rights of these United States of America, and expressly deny any jurisdiction of mercantile equity arising from the use of private credit established by various Acts of Congress, which Acts would be unlawful, if enforced upon affiant herein as such acts would effect a change of status of this affiant and subject him to Administrative law, executive chancery, Admiralty, or any other foreign and alien jurisdiction to the Common Law. (See the SUPREMACY clause in Article VI Const. of U.S.A. and supreme court landmark decision as follows.

Sovereign citizens engaged in occupations of common right " do not have "privileges" but instead have RIGHTS. (See Hale v. Henkel, 201 U.S. 43, Adkins v. Children's Hospital of District of Columbia, 261 U.S. 525 and Miranda v. Arizona 384 U.S. 436

491, 865 CT. 1602 (1966)

I repudiate all such effects, and here and now assert my birthright of freedom and immunity from compulsion and debt service as a natural and protected right under the Law of the Land---The organic Constitution of the United States of America. (See the Preamble, the VII Articles and Ten Amendments.)

Victor Swierkowski

Victor Swierkowski, Petitioner

Jurat

State of California, County of Sacramento. On this 20th day of December, 1986, before me a Notary Public in and for said county personally appeared Victor Swierkowski, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

In testimony whereof, I have hereunto set my hand and official seal on the day and year in this certificate above written.

Lee E. Baudendistel

Notary Public for the State of California
Residing at Sacramento, California

OFFICIAL SEAL
LEE E BAUDENDISTEL
NOTARY PUBLIC - CALIFORNIA
SACRAMENTO COUNTY
My comm. expires DEC 27, 1989

AFFIDAVIT OF STATUS

KNOW ALL MEN BY THESE PRESENTS, that I, Larry Boucher, a Free and Natural Citzen, am by all intents and purposes a Citizen of the United States and of California....who operates at law, on a cash basis, without recourse to Standard Lawful Money with which to transact business, due to an Act of Congress, HJR 192 of June 5, 1933, and the practices of the Federal Reserve System since December 23, 1913, until the present.

Being a citizen at the Common Law, and enjoying no privilege of limited liabiity for the payment of debts, nor engaged in any maritime adventure, nor holding any insurable interest of the county, state, or federal government, I do hereby demand and assert all of my "rights at law' under the Declaration of Independence, the Constitution of the United States, and the Bill of Rights of these United States of America, and expressly deny any jurisdiction of mercantile equity arising from the use of private credit established by various Acts

of Congress, which Acts would be unlawful, if enforced upon afiant herein as such acts would effect a change of status of this afiant and subject him to Administrative law, executive chancery, Admiralty, or any other foreign and alien jurisdiction to the Common Law. (See the SUPREMACY clause in Article VI Const. of U.S.A. and supreme court landmark decision as follows.

Sovereign citizens engaged in occupations of common right " do not have "privileges" but instead have RIGHTS. (See Hale v. Henkel, 201 U.S. 43, Adkins v. Children's Hospital of District of Columbia, 261 U.S. 525 and Miranda v. Arizona 384 U.S. 436 491, 865 CT. 1602 (1966)

I repudiate all such effects, and here and now assert my birthright of freedom and immunity from compulsion and debt service as a natural and protected right under the Law of the Land---The organic Constitution of the United States of America. (See the Preamble, the VII Articles and Ten Amendments.)

Larry Boucher

Larry Boucher Petitioner

Jurat

State of California, County of Nevada. On this 22 day of December, 1986, before me a Notary Public in and for said county personally appeared Larry Boucher, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

In testimony whereof, I have hereunto set my hand and official seal on the day and year in this certificate above written.

Edward Yun

Notary Public for the State of California Residing at Grass Valley, California

OFFICIAL SEAL
EDWARD YUN
NOTARY PUBLIC - CALIFORNIA
NEVADA COUNTY
My comm. expires APR 4, 1988

OFFICIAL SEAL
EDWARD YUN
NOTARY PUBLIC - CALIFORNIA
NEVADA COUNTY
My comm. expires APR 4, 1988

SPECIAL NOTICE

In October of 1957, Petitioner Swierkowski entered with the Respondent United States of America into a contract express, as more fully described in the Preamble and Constitution of the United States with the Bill of Rights, pursuant to the provisions of naturalization statutes. The said contract express is binding and in force for the life of Petitioner herein. Through fraud and deception, the said contract express has been violated by the following persons, as defined in the Internal Revenue Code Title 26: the Secretary, Commissioner, Directors, Agents, Officers and numerous employees of the Internal Revenue Service (I.R.S.). Certain persons within the I.R.S. have conspired and deprived Petitioner Swierkowski of Due Process of Law, and violated this Petitioner's fundamental rights. To make it appear on the record as legitimate, (as per excerpts obtained under F.O.I.A.) certain persons within the I.R.S. branded petitioner Swierkowski "ILLEGAL TAX PROTESTER (I.T.P.) and "CONSTITUTIONALIST" (See App.A-1a,b, Due

to flagrant abuse of Due process by certain persons within the I.R.S., Petitioner Swierkowski's contract with the Respondent and contract for petitioner's employment has been violated (See Article I Sec. .10 Cl.1 of the Constitution of the United States.)

The Respondent in the instant action (through I.R.S.) have caused tremendous injury and damages to Petitioner herein, all of it, under the color of LAW.. the infliction of punishment without DUE PROCESS or Judicial trial termed "Bill of pains and penalties" is very well described in the following cases:

U.S. v. Lovett, 328 U.S. 303 (1946)
U.S. v. Brown, 381 U.S. 437 (1965)
U.S. v. Dickerson, 310 U.S. 554 (1940)

The question of jurisdiction was brought at a hearing (Special Appearance by Petitioner Swierkowski) in Tax Court Case #29300-83 (Date April 16, 1985). At that hearing this Petitioner did show to the Tax Court through preponderance of evidence, that the I.R.S. has absolutely no

jurisdiction over Petitioner herein or the subject matter in question. To this date, the Tax court has not ruled on it's findings as to the facts or law on that case. Therefore, the tyranny continues by the I.R.S.. (Respondent's Agency,) effectively disregarding petitioners fundamental rights, (See transcript of Tax Court case #29300-83 (April 16, 1985) as well as inalienable right to labor and livelihood. The Petitioner can not be compelled by the Respondent (through I.R.S.) into any maritime Contract (Under the Social Security Act) as this program is VOLUNTARY, and it must remain VOLUNTARY to pass the "Constitutionality Test."

Upon this knowledge and discovery, this Petitioner rescinded his S.S.I. contract and this compulsion to participate in regulated enterprise, subject to maritime & Administrative Law in conflict with common Right Law- on which the Constitution of the United States of America (the Supreme Law) was established.

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
P.O. BOX 547
SAN FRANCISCO, CA. 94101

August -7 1986

To: All counsel in 85-2423 Swierkowski -v- United States

Date:

Dear Counsel:

Upon due consideration of your objection to submission of this case without argument, the Court has decided oral argument is not necessary.

On 22 July 1986, your case was submitted for decision to Judges Kennedy, Boochever, & Wiggins, CJJ. You will be promptly notified by mail when the case is decided.

Very truly yours,

Cathy A. Catterson
Clerk of court

By: _____
Tim Hom
Deputy Clerk

Larry Boucher
P.O. Box 3116
Grass Valley, Ca. 95945-3116

Cathy A. Catterson
Acting Clerk, U.S. Court of Appeals
Room 242
P.O. Box 547
San Francisco, Ca. 94101

Re: Letter of 08/07/1986 from Clerk of court regards denial of Oral Argument on Victor Swierkowski and Larry Boucher v. United States (9th Cir. No. 85-2423)

Dear Ms. Catterson;

This is to inform the Court for the record that Larry Boucher and Victor Swierkowski object to the Ninth Circuit Courts denial of Appellants Right of Due Process in the matter of Oral argument to present new evidence for the record and in support of the continued violation of their substantive rights.

The record will clearly show that Appellants have been denied the right of Due Process from the Federal Government by way of Administrative Appeal and now the 9th Circuit has also decided that the

Appellants do not have a right to Due Process of Law.

Let this objection stand as part of the record.

Sincerely

August 10, 1986

Larry Boucher

enc: Certificate of service

cc : Donald B. Ayer USA
Glenn L. Archer.Jr.

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY THAT ON August 11, 1986, I SERVED THE ATTACHED DOCUMENT/s ENTITLED

OBJECTION TO DENIAL OF ORAL ARGUMENT.

ON THE INTERESTED PARTIES IN THIS ACTION, BY PLACING POSTAGE PREPAID COPIES IN THE UNITED STATES POST OFFICE ADDRESSED TO THE FOLLOWING:

YOSHINORI H.T. HIMMEL AUSA
3305 FEDERAL BUILDIN
650 CAPITOL MALL
SACRAMENTO, CA. 95814

GLENN L. ARCHER
ASSISSTANT ATTORNEY GENERAL
U.S. DEPARTMENT OF JUSTICE
WASHINGTON,D.C.20530

OFFICE OF THE CLERK
U.S. COURT OF APPEALS
FOR THE NINTH CIRCUIT
U.S. COURT OF APPEALS & POST OFFICE BUILDING
7TH & MISSION ST., P.O. BOX 547
SAN FRANCISCO, CA. 94101

EXECUTED THIS 11 DAY OF August 1986

AT GRASS VALLELY, CA. 95945

S /_____
Larry Boucher
P.O. Box 3116
Grass Valley, Ca. 95945

IN PROPRIA PERSONA

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

VICTOR SWIERKOWSKI LARRY BOUCHER Plaintiff/Appellant in Propria Persona v. UNITED STATES OF AMERICA Defendant/Appellee	NO. 85-2423 D.C. No. CIV-S-85-43-EJG MEMORANDUM(1)

FILED
Sept. 15 1986
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

Appeal from the United States District court
for the Eastern District of California

Edward J. Garcia, U.S. District Judge, Presiding
Submitted: July 22, 1986(2)

Before: KENNEDY, BOOCHEVER, and WIGGINS, Circuit Judges.

The judgment of the district court is correct. Section 6103(a) of the Internal Revenue code does not prohibit disclosure of tax information when

---

(1) This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 21.

(2) The panel is unanimously of the opinion that oral argument is not required in this case. Fed. R. App. P. 34(a); 9th Cir. R. 3(f).

authorized by the code and regulations. See 26 U.S.C. § 6103(a); 26 C.F.R. § 31.3402(f) (2)-1(g) (5) (authorizing disclosure at issue). Moreover, it is settled that taxpayers' due process rights are adequately protected where they may contest their liability in the Tax Court or sue for a refund in federal district court. Stonecipher v. Bray, 653 F.2d 398, 403 (9th Cir. 1981), cert. denied, 454 U.S. 1145 (1982).

The district court properly held that it did not have jurisdiction over Swierkowski's and Boucher's other claims. First, it did not have jurisdiction to hear Swierkowski's and Boucher's tort claims against the government because claims arising in respect to taxes are precluded under the Federal Tort Claims Act. 28 U.S.C. §2680(c). Second, Swierkowski and Boucher could not seek an injunction against the government for relief from withholding of taxes because the Anti-Injunction Act, 26 U.S.C. § 7421(a), precludes such injunctions. Stonecipher, 653 F.2d at 400-01. Finally, the district court did not have jurisdiction to determine Swierkowski's and

Boucher's tax liability because the district court can only entertain suits for refund of taxes. See Thompson v. United States, 308 F.2d 628, 634 (9th Cir. 1962).

The appeal is frivolous and sanctions are imposed in the sum of $1,000 against Boucher and $1,000 against Swierkowski. Fed. R. App. P. 38. In addition, appellants shall bear the costs of appeal.

The Judgment of the district court is AFFIRMED.

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

VICTOR SWIERKOWSKI LARRY BOUCHER Plaintiff/Appellant in Propria Persona v. UNITED STATES OF AMERICA Defendant/Appellee	NO. 85-2423 PETITION FOR REHEARING

AT LAW APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA

Plaintiff/Appellants in this matter hereby petition the Ninth Circuit Court of Appeals for a rehearing in the matter of a Memorandum case No. 85-2423 filed September 15, 1986 by the Clerk of the U.S. Court of Appeals.

This hearing is to determine errors made in the below named facts in regards to Plaintiff/ Appellants.

(a) Section 6103(a) of the Internal Revenue Code

does not apply to Plaintiff/Appellants in this matter.

(b) Section 26 U.S.C. § 6103(a); 26 C.F.R. § 31.3402(f)(2)-1(g)(5) does not apply to Plaintiff/Appellants in this matter.

(c) The cite Stonecipher v. Bray, 653 F.2d 398, 403 (9th Cir. 1981) cert. denied, 454 U.S. 1145 (1982). does not apply to Plaintiff/Appellants.

(d) The Federal Tort Claims Act. 28 U.S.C. § 2680(c) does not apply to Plaintiff/Appellants.

(e) The Anti-Injunction Act, 26 U.S.C. § 7421(a) does not apply to Plaintiff/Appellants.

(f) The Cite Stonecipher, 653 F.2d at 400-01 does not apply to Plaintiff/Appellants.

(g) The cite Thomson v. United States, 308 F.2d 628, 634 (9th Cir. 1962 does not apply to

Plaintiff/Appellants.

(h) The memorandum is not signed by Judges Kennedy, Boochever, and Wiggins, involved in this decision.

The Judges for the Ninth Circuit Court of Appeals have erred in their decision (a through g) and therefore must prove the facts that support the decision of Memorandum as it has been handed down.

The proposed sanctions for U.S. Court of Ap[peals on Plaintiffs/Appellants herein are in error as was the final decision in District court below and failure to address the question of JURISDICTION by the Internal Revenue Service over Plaintiffs/Appellants. The Question of I.R.S. jurisdiction has been presented by the undersigned Plaintiff/Appellant on April 16, 1985 in U.S. Tax court which has failed up to this date to issue its finding for Law and Fact (Case #29300-83). This Plaintiff/Appellant must have an opportunity to provide this court with all

relevant evidence of flagrant abuse of due process in the instant case.

Sept. 23rd 1986

VICTOR SWIERKOWSKI Date

VICTOR SWIERKOWSKI
2046 Q STREET
RIO LINDA, CA. 95673

LARRY BOUCHER
P.O. BOX 3116
GRASS VALLEY, CA. 95945

Plaintiff/Appellants
In Propria Persona

INTRODUCTION

It is the intention of Plaintiff/Appellants in this matter to enter for the record in the Ninth Circuit Court of Appeals an **OBJECTION TO THE MEMORANDUM** which was entered as filed on September 15, 1986 in the matter of Swierkowski/Boucher No. 85-2423

It is the judgment of the Plaintiff/Appellants that a gross error has been made in the decision of Edward J. Garcia of the United States District Court, and Judges Kennedy, Boochever, and Wiggins, Circuit Judges of the Ninth Circuit Court of Appeals.

Plaintiff/Appellants are aware that Courts are required to make rulings based on fact and points of law and in the case of Plaintiff/Appellants the courts have grossly erred by making an invalid assumption/presumption without benefit of fact that Plaintiff/Appellants are indeed Taxpayers despite the fact that Plaintiff/Appellants have submitted

for the record sworn affidavits and pertinent Points and Authorities attesting to Plaintiff/Appellants non tax payer status.

This decision in the District court below was effected in full conspiracy with the Internal Revenue Service and did in effect deny Plaintiff /Appellants their substantive rights and right to due process as provided by the 5th amendment of the Constitution for the United States.

Plaintiff/Appellants sworn Affidavits were ignored, Freedom Of Information Act requests were denied, and Plaintiff/Appellants substantive rights which have been grossly violated, have generally been frustrated in their attempt to obtain their inalienable right to DUE PROCESS under the law.

Although "ministerial" acts are "mandated", the primary ministerial duty is to NOT VIOLATE RIGHTS, and to confine activities to jurisdictional limits. However, to determine jurisdiction is in se, a JUDICIAL act and to choose in favor of such supposed

jurisdiction is to do so at the officer's or judge's peril (Midd. v. Low), subjecting him to civil suit under 42 USC 1983 from which he is NOT immune (Ex Parte, Va.), when acting in WANT of jurisdiction.

The IRS being a PRIVATE Corporation (supra), is thus in SUBSTANCE (substance governing over mere form, Felbro v. IRS, 315 F2d 784) subject to attack by their victims from every point of view of the law (civil, criminal, and tort, as are their agents and hirelings.

The record shows in the instant case, through Plaintiff /Appellants affidavits, exhibits, memorandums that the Internal Revenue Service perpetrated fraud and deception upon Plaintiff /Appellants. The false jurisdiction by the IRS over Plaintiff/Appellants never was addressed in the Federal District Court or this Court of Appeals.

The government has no competent evidence which would support a legal conclusion that Plaintiff/ Appellants had a "gross income" or "taxable income" or they were "obligated to pay" or they were "required by law for specific performance" under

Title 26 IRC. Plaintiff/Appellants objection to false and fraudulent jurisdiction by the IRS was made crystal clear by the preponderance of evidence in favor of Plaintiff/Appellants. Plaintiff/Appellants jurisdiction (by the IRS) objection additional involves the fact that they are not within the purview of the Internal Revenue Code, much less naming Plaintiff /Appellants TAXPAYERS. Because of the above relevant fact, Plaintiff/ Appellants find the court of Appeals in error.

In addition, Plaintiff/Appellants find, that the requirement and careful scrutiny by the Court is absent to separate it's mere conclusions of law from properly pleaded facts.

Plaintiff/Appellants feel that it is time that the Court addressed the matter of facts in this case and act in accordance with justice and the Supreme Law so that true justice may be served.

A relevant and pertinent QUOTE from 5 USC 706 is applicable to the instant case.

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall: (1) COMPEL agency action unlawfully withheld or unreasonably delayed answering petitions, etc.); and (2) hold UNLAWFUL and set aside agency action, findings and conclusions abuse of discretion, or otherwise not in accordance with law; (b) contrary to Constitutional right, power, privilege, or immunity; (c) in excess of statutory JURISDICTION, authority, or limitations short of statutory right; (d) without observance of procedure required by law (see petition above and in 555 (e); (E) unsupported by substantial evidence in a case subject to sanctions 556 and 557 or otherwise reviewed on the record of an agency hearing provided by statute; or (F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court. In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be "taken of the rule of prejudicial error."

And,

There can be no sanction or penalty imposed upon one because of his exercise of Constitutional Rights (Sherar v. Cullen, 481 F2d 946 1973,

and "We find it intolerable that one Constitutional right should have to be surrendered in order to assert another." (Simmons v. US 390 US 389 (1968), and "Where rights secured by the constitution are involved, there can be no rule making nor legislation which would abrogate them," (Miranda v. Arizona, 380 US 436. Thus the filing of...[this Appeal]...can not be held nor thought to be unlawful or subject of a penalty civil or criminal. Rights, Duties, REMEDIES, Redress and RElief are essential elements of JUSTICE (se 5 Corbin 990, and US Const. Int. & Anly. Jayson/Small on discussion of Hurtado v. Cal. USSCt. 1884 at page 1084 (1969) Ed), and 1313 1971 Ed).

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY THAT ON September 23,1986, I SERVED THE ATTACHED DOCUMENT/s ENTITLED Petition for Rehearing and Introduction for the same ON THE INTERESTED PARTIES IN THIS ACTION, BY PLACING POSTAGE PREPAID COPIES IN THE UNITED STATES POST OFFICE ADDRESSED TO THE FOLLOWING:

YOSHINORI H.T. HIMMEL AUSA
3305 FEDERAL BUILDING
650 CAPITOL MALL
SACRAMENTO, CA. 95814

GLENN L ARCHER. JR.
ASSISTANT ATTORNEY GENERAL
U.S. DEPARTMENT OF JUSTICE
WASHINGTON, D.C. 20530

EXECUTED THIS 23 DAY OF September 1986

AT SACRAMENTO CALIFORNIA

S /_____
VICTOR SWIERKOWSKI
2046 Q STREET
RIO LINDA, CA. 95673

IN PROPRIA PERSONA

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

VICTOR SWIERKOWSKI LARRY BOUCHER Plaintiff/Appellant in Propria Persona v. UNITED STATES OF AMERICA Defendant/Appellee	NO. 85-2423 D.C. No. CIV-S-85-43-EJG ORDER FILED OCT. -9 1986 CATHY A. CATTERSON CLERK U.S. COURT OF APPEALS

Appeal from the United States District court
for the Eastern District of California

Before: KENNEDY, BOOCHEVER, and WIGGINS, Circuit Judges.

The petition for rehearing is DENIED.

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

VICTOR SWIERKOWSKI LARRY BOUCHER	NO. 85-2423 D.C. No. CIV-S-85-43-EJG
Plaintiff/Appellant in Propria Persona	RECEIVED CATHY A. CATTERSON ACTING CLERK U.S. COURT OF APPEALS OCT. 27 1986
v.	
UNITED STATES OF AMERICA	
Defendant/Appellee	DOCKETED OCT. 27 1986

Notice of Appeal to the Supreme Court of the United States

Notice is hereby given that Victor Swierkowski and Larry Boucher, the plaintiffs above named, hereby appeals to the Supreme Court of the United States from the MEMORANDUM affirming Judgement of the District Court, entered in this action on September 15, 1986.

This appeal is taken pursuant to 28 U.S.C. §1651(a) and pursuant to sections 7431 and 6103 of the Internal Revenue Code of 1954.

LARRY BOUCHER
P.O. Box 3116
Grass Valley, Ca. 95945

VICTOR SWIERKOWSKI
2046 Q STREET
RIO LINDA, CAL. 95673

Plaintiff/Appellants
In Propria Persona

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY THAT ON October 23, 1986, I SERVED THE ATTACHED DOCUMENT/s ENTITLED

NOTICE OF APPEAL TO THE UNITED STATES SUPREME COURT

ON THE INTERESTED PARTIES IN THIS ACTION, BY PLACING POSTAGE PREPAID COPIES IN THE UNITED STATES POST OFFICE ADDRESSED TO THE FOLLOWING:

YOSHINORI H.T. HIMMEL AUSA
3305 FEDERAL BUILDING
650 CAPITOL MALL
SACRAMENTO, CA. 95814

GLENN L. ARCHER
ASSISSTANT ATTORNEY GENERAL
U.S. DEPARTMENT OF JUSTICE
WASHINGTON,D.C.20530

Cathy A. Catterson
Acting Clerk, U.S. Court of Appeals
Room 242
P.O. BOX 547
SAN FRANCISCO, CA. 94101

EXECUTED THIS 23 DAY OF October 1986

AT Dobbins CA.

Victor Swierkowski
2046 Q. St.
Rio Linda, Ca. 95673

S / Victor Swierkowski
IN PROPRIA PERSONA

UNITED STATES TAX COURT

In the Matter of:	)	
	)	
VICTOR SWIERKOWSKI and DOROTHY SWIERKOWSKI,	)	
	)	
Petitioner,	)	Docket No. 29300-83
	)	
vs.	)	
	)	
COMMISSIONER OF THE INTERNAL REVENUE,	)	
	)	
Respondent,	)	

Pages 1 through 23

Place: San Francisco, Ca.

Date: April 16, 1985

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I N D E X

OPENING STATEMENT OF:	PAGE
On behalf of the Petitioner:	6
On behalf of the Respondent:	4

WITNESSES:

None

CLOSING ARGUMENTS OF:	PAGE
On behalf of the Petitioner:	None
On behalf of the Respondent:	Non

UNITED STATES TAX COURT) 1
)
In the Matter of:)
)
VICTOR SWIERKOWSKI and)
DOROTHY SWIERKOWSKI,)
Petitioners,)
) Docket No.
vs.) 29300-83
)
COMMISSIONER OF THE INTERNAL REVENUE,)
)
Respondent)
)

Tuesday,
April 16, 1985

Room 2021
450 Golden Gate Avenue
San Francisco, Ca. 94102

The above-entitled matter came on for hearing, pursuant to notice, at 4:06 p.m.

BEFORE: HONORABLE LAWRENCE A. WRIGHT
Judge

APPEARANCES:

On behalf of the Petitioner:

VICTOR SWIERKOWSKI, Pro se

On behalf of the Respondent:

THOMAS M. ROHALL, ESQ.
District Counsel, IRS
801 I Street
Room 204
Sacramento,Ca. 95814

THE CLERK: All rise.

THE COURT: Be seated.

THE CLERK: Docket No. 29300-83, Victor Swierkowski and Dorothy Swierkowski.

Would you please state your appearances for the record.

MR. ROHALL: Thomas Michael Rohall for Respondent.

MR. SWIERKOWSKI: Victor Swierkowski for Plaintiff any my wife Dorothy, she's in the hospital. She can't walk so I have the power of attorney to represent her in whatever happens here on behalf of both of us.

THE COURT: We may have some problems with that because of the fact that you're not a lawyer admitted to practice in this Court, but we have sympathy in your wife's absence and I'm sure you'll protect your rights in this case.

MR. SWIERKOWSKI: Thank you, Your Honor.

THE COURT: Do you have an opening statement?

MR. ROHALL: I don't have an opening statement, but I do have some motions that I would like to file at this time.

THE COURT: You may file your motions.

MR. ROHALL: They are motion to dismiss for failure to prosecute properly and a motion for an award of damages under Section 6673..... page 3

(Pause.)

THE COURT: you have no stipulations of facts in this case:

MR. ROHALL: No, Your Honor. I said I wouldn't make an opening statement, but maybe I should.

Your honor, this is basically just a substantiation case and I've tried to get the Petitioner to sit down and we could go over this issue. We've never been able to get beyond the point of saying that this court and I don't have jurisdiction over the tax return and the various other arguments that Petitioner raises. Hence, we don't have the stipulation and for the lack of an opening statement as well. I don't know what further I can add to this.

THE COURT: Well, let me ask you a couple of questions. This case involves only one tax year?

MR. ROHALL: Yes, Your Honor, it is the tax year 1979 and there are basically two issues. One is the employee business expenses.

MR. SWIERKOWSKI: Will you check that year, please?

THE COURT: I have 1981 on the deficiency notice.

MR. ROHALL: 1981. Perhaps I was in error on the year.

THE COURT: I have a deficiency in income tax in

..... page 4

the amount of #3,405 for the taxable year ending December 31, 1981.

MR. ROHALL: That's correct, Your Honor.

THE COURT: There appears to be no additions to the tax, is that correct?

MR. ROHALL: That is correct, Your Honor.

THE COURT: Did the taxpayer file a tax return in that year?

MR. ROHALL: Yes, he did, Your Honor and he

filed timely.

THE COURT: The deductions that were disallowed were primarily travel expenses?

MR. ROHALL: Yes, Your Honor.

THE COURT: It was a straight substantiation issue.

MR. ROHALL: Yes, Your Honor. There is a legal issue involving where the taxpayer's tax home is for purposes of away from home expenses. That seems to me to be secondary to actually getting down to the documentation showing that these trips were actually made. There are miscellaneous deductions for uniforms, telephone and it looks like equipment rental and storage.

THE COURT: I'll take your motion for an award of damages under the provisions of Section 6673 under advisement and I will give you an opinion on that in writing. I'll

.....page 5

take your motion for dismissal for failure to properly prosecute under advisement without ruling on that motion and I will give you an opinion on

that motion.

MR. ROHALL: Thank you, Your Honor.

THE COURT: Do you have anything else to add?

MR. ROHALL: I have nothing further.

THE COURT: Do you care to make an opening statement?

MR. SWIERKOWSKI: Yes, Your Honor. I wish to state at this time that I'm here by special appearance only. Therefore, I can't find a law, a legal way of substantiating Respondent's allegation that they actually do have jurisdiction over my person and I do claim and I do so state, deny that I never gave Respondent my jurisdiction over my person and I so claimed in my appeal in October of '83. I reclaimed again in secondary motion in appeal dated approximately January of '83. I again stated in my motion dated March 2, 1984 and again in a motion which was not accepted by the Court in Washington. I again claimed all these things, large substantiation backing my position which was also denied. I also asked for substantiation by the Respondent from Appeals Officer by the name of Mr. Williams last

June, June 19th. I couldn't get woo or boo or anything out of him to tell me how, show me where is the law and I have this code with me, show me where is the law that I am required to file

.....page 6

and where is the law which gives you jurisdiction over my person? He says, "We're not going to discuss that." So, here I am and here attorney for the REspondent says it's for failure to properly prosecute. Now, I filed already well over half a thousand of documents to Internal Revenue Service and the Tax Court also probably well over 100 documents and I'm being told here, failure to prosecute.

Now, here I am. I'm a person who is self taught. I don't know that much about law, but I can read and I'm, a hard worker. So, all this knowledge that I'm speaking of, which I'm writing in all my documents here, it's acquired, backed up either by the Title 26 Code. I always claim my constitutional right and I'm being denied and I believe—I mean, the Admiralty Code where I don"t belong because if I

I give the code jurisdiction to pursue this any further, it means I waive my rights and I can not do that, Your Honor.

THE COURT: I accept that statement as an opening statement and I assume that you'll want to give some testimony, buy maybe you don't. If you do I will request that I put you under oath so that what you have to say will be—

MR. SWIERKOWSKI: That's enough, Your Honor, be cause I don't know this thing too much. I've never been in Court in my life. So, you, I'm pretty well—how you call it, green out there.

THE COURT: You've been exposed to some today

.....page 7

because I've noticed you in the back row. What I would like to do, what I'm trying to say is I asked you if you wanted to make an opening statement and you made an opening statement. I accepted it as an opening statement.

MR. SWIERKOWSKI: Thank you.

THE COURT: Now I ask you if you'd like to be sworn so that you can give any evidence you want to

under oath.

MR. SWIERKOWSKI. Let me ask you because I don't know, I'm in the blind here. When I waive my fundamental constitutional rights and Bill of Rights by continuing this thing?

THE COURT: You and I may disagree as to what those are. Some of those things, unfortunately, you've waived already by filing a petition in this Court.

MR. SWIERKOWSKI:1 Well, you see, that's what happens to green folks like me.

THE COURT: When I say that, that act of filing a petition in this Court eliminates your argument that you're entitled to a trial by jury. For example, what happens is that basically when the Internal Revenue Service proposes to increase your taxes what they're doing is disallowing what you said on your tax return for one reason or another either you may not have reported all of your income or you may have overstated deductions or for one reason or another they are

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disagreeing with what you filed. At that point in time you have about three different avenues as to where you can go. You can pay that questionable tax under protest and sue the Government and go to Court and get a jury trial.

For the benefit of taxpayers who might not have the money to tie up for that length of time Congress in it's wisdom has provided an alternative route which is not to pay the tax, but to file a petition in the United States Tax Court and the United States Tax Court Judge who has no relationship with the Internal Revenue Service in any, a separate and distinct presidential appointment, a Judge will come down and hear your case without your having to tie up your money by paying the tax. That's for the benefit of the taxpayer who doesn't have the money to pay and then sue for a refund and then get a jury trial.

It's a detriment in the fact that if he elects to go that route and he makes that election by filing a petition within 90 days, one he's done that he's waived his rights to a jury trial. In that

sense, I suppose, by just filing your petition you gave up certain of those rights.

MR. SWIERKOWSKI: Well, Your Honor, my question is here and now to carry on, can I carry on without waiving further rights and giving the Court jurisdiction?

THE COURT: The Court already has jurisdiction and unfortunately once the Court gets jurisdiction, the Court can,

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the parties can't unilaterally withdraw that jurisdiction. It doesn't amount—once the Court has jurisdiction, the only way the Court loses jurisdiction is for the Court to enter an order denying itself jurisdiction. We do that when Petitioners one, don't show up or don't comply with the Internal Revenue Service or don't comply with this court which is a separate distinct body by following our rules which compel such things as stipulations to facts that aren't in dispute or when a Petitioner says I am going to withdraw my petition and you can assess a full deficiency against me and

I intend to pay it. You can't write me a letter and say I've changed my mind and you know longer have jurisdiction. In order for that to occur under our rules, I have to say that we're removing ourselves from this case and that we no longer have jurisdiction and we issue an order to the Internal Revenue Service to assess the deficiency in the full amount.

The 90 days win which you've had to make the election not to pay is long gone which may account for some of your problems in the fact that every body that you told there you don't have jurisdiction and I withdraw everything that I have said that gives you jurisdiction, that is what happened. You can't do that unilaterally once you gave me jurisdiction and I can assure you under our statutes and under our constitution that the Appeals Court and the United States Supreme

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Court have held that we do have jurisdiction and so I have jurisdiction. Now, you as a reasonable man can disagree with me on that. You can appeal any

decisions that I make including disallowing motions that you filed as part of that decision process.

MR. SWIERKOWSKI: A whole bunch of that, a whole bunch.

THE COURT: You're entitled to your day and this is it.

MR. SWIERKOWSKI: You see, Your Honor, I go by the code which is Title 26 here. I ask Appeals Officer, Mr. Williams, the jurisdiction that we're talking about quite a bit, I have it on cassette incidentally, but I didn't have it typed up. It could be available and we talked about it and he wouldn't give me a hint even. He'd be changing the subject and he'd say, "No we're not going to discuss that," and then he went to his thing and I wanted to know to my correspondence with Internal Revenue, Sacramento, San Francisco, Fresno, all kinds land I never had one letter on my appeals from them, ever, several of them, four altogether.

Here I am. This is my first meaningful way of discussing something where we can either go forward or stop it here or I don't know what to do, really,

I'll be quite honest.

THE COURT: I'm going to decide the case. there

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are things in this case that bother you tremendously and there are things in this case that bother me as Tax Court Judge because I would much rather be hearing some other case, not that I have anything against you personally, believe me I don't. It's just that I have a lot of pressing cases involving very pressing issues and hundreds of thousands of dollars that I ought to be devoting my time to.

MR. SWIERKOWSKI: I know it.

THE COURT: This is your only chance that you're going to get with me.

MR. SWIERKOWSKI: Okay.

THE COURT: If you have any evidence as to the expenses that were disallowed by the Service and you want me to consider them, put them in. If you don't, I have no choice because that's another rule and that rule is that Congress passed, I didn't, I didn't make it, and that rule is that the statutory notice of deficiency in this case is presumed to be

correct. That means that cases have held and that the rule of evidence is that when they sent you that 90-day letter, it's presumptively correct and the burden is on the taxpayer to be the moving party, to come in and say, "That's not correct and here's why," and if you can't carry the burden then as a Judge, I have to hold against you. So, you can present anything you want for me to consider and whether you agree or disagree with me, I will tell you one

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thing, I will consider it.

MR. SWIERKOWSKI: Thank you. I've never been given a willful person from IRS listening to everything I said and I sent hundreds of this paper. It was education in a way and it don't hurt anybody especially at my age. I had my 65th birthday yesterday and here I am facing--

THE COURT: You and I are not that far apart.

MR. SWIERKOWSKI: Facing Uncle Sam with this tremendous resources. I don't understand, but I'm doing my best and what really happened and what

really transpired? This fellow, George Gonzalez, had some kind of orders from higher up no matter who shows up on this kind of a thing, just to nail them and then brand him because from the --up I do have hundreds of documents which came up a year later. I couldn't get the thing out of them for a long time. Finally I did get it and there it was, I couldn't believe it. Do you know what they put on me on my record there and I have a copy of it? ITP Constitutional list. Yes, Your Honor.

Now, here's my friend in Sacramento branding this veteran World War II who almost died for freedom we have today, he branded me constitutional illegal tax protestor. Can you imagine that? I went bananas. I said, "I don't believe it." But, here it is. I have the documents and that's what they say. I contacted some lawyers and they said, "Vic, go after them." I haven't done a thing yet

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because I figured it's very complicated and I need to study much more than I do. I've got no money at all because they put me on single one a year-and-a

half ago. They have taken every penny I've got. I lost my home. I lost my son and I had no money for his funeral last Summer and that's what the issue was with Gonzalez at my audit. I said, "Mr. Gonzalez, I'm not moving my wife and my very sick son in the mountains where the job is on the hydro power plant where I work as a mechanic because there would be nobody--access to my family. You tell me to ship them out so I would have one home instead of two homes and I said, "No way, Hose."

I am allowed to support my family and take care of their needs. My wife had two cancer operations. She's in the hospital again and could be sick for years. I don't know how long that's going to last. I got white in the last ten years from worry and I have to put up with this charade? God help us as a Country.

Yes, Your Honor, I've been railroaded really bad. I didn't know a thing about Tax Court. I don't know nothing about tax protestors illegal or the like, but I'm learning and I'm learning fast and I know I'll be hurt. I've been hurt real bad. I don't

want to go public, but they're forcing me to do it. By that I mean, tell everybody, the media, write a book and publish them, go and work seven days a week, 24 hours a day for call. So, we will have the freedom and

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Justice for all because unfortunately this veteran of World War II his freedom has been taken away from him almost hundred percent again like Gestapo did in 1939 and by God we fought these so and so's and we won.

The Nuremburg trial was held for people who said, "Yes, but government told us. We hung these rascals one by one. The order was taken care of by the various nations so-called Fighters for Freedom."

Your Honor, I don't have the stomach for this thing really. I shouldn't be here, but I'm going to fight for my cause. I've been hurt as a Father. I've been hurt as a veteran. I lost country. I never could see my parents. My two sisters were hunted by Gestapo and died. I almost died and for what?

I was a pilot, veteran, combat five years,

great record. I have medals, books, everything. I'm proud of it, yes, I've done my job. Others paid a bigger price than I did. My buddies are scattered all over there in the countryside in cemeteries. Eight percent were survivors of

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guys like Victor, eight percent, Your Honor. I fought for my rights and I'm going to keep them,by God.Nobody can deny it.

THE COURT: Let me tell you, the issue in this case has to do with the deductibility of travel expenses. They don't have anything to do with the Bill of Rights. Congress decides what's taxable, what's not taxable. congress decides whether a deduction lies or doesn't lie. People who interpret those laws, the Internal Revenue Service sometimes do it correctly and sometimes make mistakes. The purpose of this Court is to hear the evidence and adjust those mistakes that are made if mistakes have been made.

MR. SWIERKOWSKI: They've made a great mistake, Your honor..(the remainder of this transcript is available upon request by the court).....

BEST AVAILABLE COPY

Special Handling Notice

Name: Sanier-Kaukl, Wisconsin | Year(s)/Period(s) Ended 1951

Expedite

Check Applicable Box(es) with red pencil

- ☐ Tax Protestor
- ☐ Joint Committee Case
- ☐ Bankruptcy-Receivership, Expires _____
- ☐ Collection action deferred pending this examination
- ☐ Short Period Return/Termination of taxable year
- ☐ Request for early determination of tax section _____
- ☐ Informant Claim
- ☐ Fraud or prosecution
- ☐ Offer in compromise
- ☐ Transferor-Transferee, expires _____
- ☒ Other TAX PROTESTOR (Employee, Complaint Letter, etc.) Specify
- ☐ Prompt Assessment Request, Expires _____

Special Handling

TIME

Assess/Adjust
- ☐ Deficiency, claim involved
- ☐ Penalty
- ☐ Prepayment Credit

☐ Manual refund

- ☐ Deceased taxpayer
- ☐ Hardship case
- ☐ Innocent Spouse

Process
- ☐ Partial Agreement
- ☐ Partial Payment

☐ Suspense Case

Issue Notice of Claim Disallowance ☐ Partial ☐ Full

☐ Section 531 Tax $ _____

☐ Restricted interest case, section

☐ Delinquent account held by Revenue Officer or OCF

_____ (Name of Officer)

☐ Transferee, fiduciary assessment *(Form 1296 enclosed)*

☐ Partial Payment

☐ Extension of time for payment of estate tax

☐ Self-employment tax case

☐ Recommendation to delay allowance of overpayment *(Form 1308 enclosed)*

☐ Transmit to ARC-Examination for post review after collection action

☐ Do not send to state—disclosure prohibited by law (tax treaty, wagering tax, currency transaction reports, and grand jury information)

☐ Other *(Specify)*

☐ Change from separate return to joint return

☐ Send all communications as per power of attorney

☐ Employment tax form _____, requires processing

☐ Criminal action pending, suspend collection activity—return case file to chief, Examination Division

☐ Copy of Return

☐ Address/Name change

_____

_____

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☐ Mandatory Review *(state nature)*

TAX PROTESTOR Constitutio

Note: This form is to be fastened at the upper right corner of the case file and on top of all other forms except Form 895 and 2644.

BEST

W-4 WORKSHEET

SSN 559-44-8259 89542-099-30083-3
VICTOR SWIERKOWSKI
EMPL 2046 Q ST
RIO LINDA CA 95673

IRS

DATE 10-19-83

TE

SENT LETTER:

1335 ✓ 1650 ✓

1410 1503

1642 1643

1379

W-4 ACCETABLE

W-4 NOT ACCEPTABLE ✓

ALLOW: MARRIED SINGLE 1

WITHDRAW EXEMPT CLAIM YES NO

P/A 1

DEPS 0

SPEC 0

DED 0

E 1 FORM 6355
2
3 USE TABLE ON FORM W-4
4
5

CREDITS 0

E 1 FORM W-4
2
3
4
5

TOTAL 1

TP ENTITLED TO EXEMPT YES NO ✓

SENT 1379 LETTER BECAUSE

PENALTY PROPOSED YES NO
PENALTY ASSESSED YES ✓ NO
PENALTY WAIVED YES NO
PENALTY ABATED YES NO ✓
I.T.P. YES ✓ NO

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IRS. PHOTOCOPY
IRS. PHOTOCOPY

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